

LEGISLATIVE BILL 322

Approved by the Governor May 13, 2009

Introduced by Avery, 28; Hansen, 42; Pirsch, 4.

FOR AN ACT relating to state government; to amend section 81-108, Reissue Revised Statutes of Nebraska, and sections 49-1401 and 49-1499.03, Revised Statutes Cumulative Supplement, 2008; to define terms; to prohibit nepotism; to eliminate provisions relating to employment of family members; to eliminate a penalty; to harmonize provisions; to repeal the original sections; and to outright repeal section 49-1499.01, Revised Statutes Cumulative Supplement, 2008.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 49-1401, Revised Statutes Cumulative Supplement, 2008, is amended to read:

49-1401 Sections 49-1401 to 49-14,141 and section 2 of this act shall be known and may be cited as the Nebraska Political Accountability and Disclosure Act.

Sec. 2. (1) For purposes of this section:

(a) Family member means an individual who is the spouse, child, parent, brother, sister, grandchild, or grandparent, by blood, marriage, or adoption, of an official or employee in the executive branch of state government;

(b) Nepotism means the act of hiring, promoting, or advancing a family member in state government or recommending the hiring, promotion, or advancement of a family member in state government, including initial appointment and transfer to other positions in state government; and

(c) Supervisor means an individual having authority, in the interest of the state, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline employees, responsibility to direct them or to adjust their grievances, or effectively to recommend any such action, if the exercise of such authority is not merely of a routine or clerical nature but requires the use of independent judgment.

(2) Except as authorized in subsection (5) of this section, an official or employee in the executive branch of state government shall not engage in nepotism.

(3) Except as authorized in subsection (5) of this section, an official or employee in the executive branch of state government shall not act as a supervisor to his or her family member.

(4) In addition to the other penalties authorized under the Nebraska Political Accountability and Disclosure Act, any person violating this section may be subject to disciplinary action.

(5) (a) The head of an agency may, upon a written showing of good cause, grant an exception to subsection (2) or (3) of this section. The written showing of good cause shall be filed with the commission and shall be considered a public record.

(b) An official or employee in the executive branch of state government who becomes a supervisor to his or her family member other than by means of nepotism shall notify the head of the agency within seven days of becoming aware of such situation and may continue to act as a supervisor until the head of the agency remedies the situation. The head of the agency shall act as soon as practicable.

(6) It is the intent of the Legislature that the legislative branch and the judicial branch of state government develop and implement internal policies prohibiting nepotism and the supervision of a family member.

Sec. 3. Section 49-1499.03, Revised Statutes Cumulative Supplement, 2008, is amended to read:

49-1499.03 (1) (a) An official of a political subdivision designated in section 49-1493 who would be required to take any action or make any decision in the discharge of his or her official duties that may cause financial benefit or detriment to him or her, a member of his or her immediate family, or a business with which he or she is associated, which is distinguishable from the effects of such action on the public generally or a broad segment of the public, shall take the following actions as soon as he or she is aware of such potential conflict or should reasonably be aware of such potential conflict, whichever is sooner:

(i) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict; and

(ii) Deliver a copy of the statement to the commission and to the person in charge of keeping records for the political subdivision who shall

enter the statement onto the public records of the subdivision.

(b) The official shall take such action as the commission shall advise or prescribe to remove himself or herself from influence over the action or decision on the matter.

(c) This subsection does not prevent such a person from making or participating in the making of a governmental decision to the extent that the individual's participation is legally required for the action or decision to be made. A person acting pursuant to this subdivision shall report the occurrence to the commission.

(2)(a) Any person holding an elective office of a city or village not designated in section 49-1493 and any person holding an elective office of a school district who would be required to take any action or make any decision in the discharge of his or her official duties that may cause financial benefit or detriment to him or her, a member of his or her immediate family, or a business with which he or she is associated, which is distinguishable from the effects of such action on the public generally or a broad segment of the public, shall take the following actions as soon as he or she is aware of such potential conflict or should reasonably be aware of such potential conflict, whichever is sooner:

(i) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict;

(ii) Deliver a copy of the statement to the person in charge of keeping records for the city, village, or school district who shall enter the statement onto the public records of the city, village, or school district; and

(iii) Abstain from participating or voting on the matter in which the person holding elective office has a conflict of interest.

(b) The person holding elective office may apply to the commission for an opinion as to whether the person has a conflict of interest.

(3) Matters involving an interest in a contract are governed either by sections 49-14,102 and 49-14,103 or by sections 49-14,103.01 to 49-14,103.06. Matters involving the hiring of an immediate family member are governed by section ~~49-1499.01~~ or 49-1499.04. Matters involving nepotism or the supervision of a family member by an official or employee in the executive branch of state government are governed by section 2 of this act.

Sec. 4. Section 81-108, Reissue Revised Statutes of Nebraska, is amended to read:

81-108 (1) Except as provided in subsection (2) of this section, no head of any department referred to in section 81-101 shall hold any other public office or receive any profit from any other public or private employment. For purposes of this section, employment shall not be interpreted to mean membership on the board of directors of any corporation, business, or association, whether or not the head of the department receives compensation for such membership.

(2) Nothing in this section shall be interpreted as prohibiting the head of one of the departments referred to in section 81-101 from serving on any public advisory or policymaking board, commission, committee, or council.

~~(3) No person shall be hired as an employee of any department referred to in section 81-101 while a member of his or her family is serving as the head of the department. This subsection shall not require the termination of employment of (a) any person who is an employee of a department at the time a member of his or her family is appointed to head the department or (b) any person who is an employee of a department on May 18, 1991.~~

~~(4) For purposes of this section, member of his or her family shall mean any individual related to the employee by blood, marriage, or adoption as the employee's spouse, child, parent, brother, sister, grandchild, or grandparent or any individual so related to the employee's spouse.~~

Sec. 5. Original section 81-108, Reissue Revised Statutes of Nebraska, and sections 49-1401 and 49-1499.03, Revised Statutes Cumulative Supplement, 2008, are repealed.

Sec. 6. The following section is outright repealed: Section 49-1499.01, Revised Statutes Cumulative Supplement, 2008.